

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

Case No. A-5595

PETITION OF JAMES RONALD HILL  
(Hearing held May 30, 2001)

OPINION OF THE BOARD  
(Effective date of Opinion, July 31, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-9.45. The petitioner proposes to construct an accessory structure (pool) in the side yard and Section 59-C-9.45 requires that accessory structures are to be located in the rear yard only.

The subject property is Lot 25, Block A, located at 513 Tanbark Court, Brinklow, Maryland, in the RC Zone (Tax Account No. 03047168).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 20 x 40 foot accessory structure/pool in the southern side yard. See, Exhibit Nos. 5(a) and 5(b). The petitioner testified that his property is an oddly shaped lot located on a cul-de-sac.
2. The petitioner testified that when he received a building permit to begin the construction of his home in November of last year, he was informed that the pool could only be built in the side yard.
3. The petitioner testified that the pool would not be significantly visible from the street and that the pool would be located in a side yard that adjoins a tree conservation area. See, Exhibit Nos. 4(a) and 4(b).
4. The petitioner testified that he has spoken with his neighbors and that he has received the support of his neighbors and the approval of his architectural committee. A letter of support was entered in the record as Exhibit No. 13.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is an oddly shaped lot with a septic system located in the rear yard. The Board finds that these conditions are unusual and peculiar to the property, and that the strict application of the regulations would result in an undue hardship and practical difficulties for the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a pool in the side yard is the minimum reasonably necessary to overcome the unusual conditions of the property.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction would continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no testimony or correspondence in opposition to the variance request and the petitioner has received the support of his neighbors and his architectural committee. The Board finds that the proposed construction would not be detrimental to the use and enjoyment of the neighboring and adjoining properties and that the pool would be surrounded by a tree conservation area.

Accordingly, the requested variance to permit the construction of an accessory structure (pool) in the side yard is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 7.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in this Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 31st day of July, 2001

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

